

GIG HARBOR CITY COUNCIL MEETING OF JANUARY 14, 2002

PRESENT: Councilmembers Ekberg, Young, Franich, Owel, Dick, Picinich, Ruffo and Mayor Wilbert.

CALL TO ORDER: 7:00 p.m.

PLEDGE OF ALLEGIANCE

PUBLIC HEARINGS:

Annexing Property Adjacent to Public Works Shop. Mayor Wilbert opened the public hearing at 7:01. John Vodopich, Director of Community Development, explained that the city is the owner of approximately 5.3 acres adjacent to the Public Works Shop at 5118 89th Street. He said that the city desires to annex that property into the city limits. There were no public comments and the Mayor closed the public hearing at 7:02 p.m.

CONSENT AGENDA:

These consent agenda items are considered routine and may be adopted with one motion as per Gig Harbor Ordinance No. 799.

1. Approval of the Minutes of City Council Meetings of December 10, 2001.
2. Proclamations/Correspondence: a) Martin Luther King Day b) Committee to Preserve Pierce Transit c) PCRC - Call for Nominations d) AWC, I-695 Funding.
3. Municipal Court Judge Contract.
4. Communications Maintenance Agreement.
5. Development Grant Agreement Acceptance - Dept. of Community, Trade & Economic Development.
6. Art for Gig Harbor Civic Center - Consultant Services Contracts.
7. Liquor License Renewals: Harbor Arco AM/PM; Gourmet Essentials; Harbor Inn Restaurant; El Pueblito Restaurant; Market Express.
8. Approval of Payment of Bills for December 24, 2001.
Checks #3765 through #34896 in the amount of \$1,848,095.99.
9. Approval of Payment of Bills for January 14, 2002.
Checks #34897 through #35075 in the amount of \$877,577.89.
10. Approval of Payroll for the month of December.
Checks #1184 through #1238 in the amount of \$191,866.08.

MOTION: Move to approve the Consent Agenda as presented.
Ekberg/Ruffo - unanimously approved.

Mayor Wilbert complimented Pat Iolavera, Senior Planner, for her success in obtaining the Development Grant.

OLD BUSINESS:

1. Closed Record Appeal of Hearing Examiner's Decision - Denton Bed & Breakfast.
Mayor Wilbert read the guidelines for a closed record appeal process and gave a brief overview

of what has occurred to date. As part of the process, the Mayor asked if any member of the Council had engaged in communication with opponents or proponents regarding this issue outside of the public hearing process. Councilmember Ruffo said that prior to the last meeting, he received three phone calls regarding this application, but he explained that he could not comment on the issue. The Mayor then asked if any Councilmember, or any member of the audience, felt that any Councilmember could not consider this application in a fair and objective manner. There was no response and she then asked if anyone objected to her participation. Again, there was no response.

John Vodopich explained that the packet contained a memorandum dated January 14th prepared by the city attorney and himself outlining the chronology of events and stating that they both recommend that the Council dismiss the appeal filed by Mr. Greg Hoeksema and affirm the Hearing Examiner's decision of October 3, 2001 granting the issuance of the Conditional Use Permit 01-05 and Variance 01-07.

Councilmember Dick made the following motion.

MOTION: Move that we set aside the final decision of the Hearing Examiner on CUP 01-05 and the Variance 01-07 and the conditional use permit variance applications submitted by Steve and Janice Denton for 9107 North Harborview Drive, Gig Harbor, Washington on the basis that the record upon the appeal does not contain substantial evidence in support of the required finding that the variance requested meets the minimum necessary to make reasonable use of the property.
Dick/

Mayor Wilbert asked Councilmember Dick to restate his motion, as the audience could not hear him.

MOTION: Move that we set aside the final decision of the Hearing Examiner on the variance and the conditional use permit upon the grounds that there is not substantial evidence in the record to support the Hearing Examiner's finding that the proposed variance constituted the minimum necessary to make use of the property as required by the Gig Harbor City Code.
Dick/Owel -

Councilmember Owel reaffirmed that under Roberts Rules of Order, a second to a motion is given because an item is worthy of discussion, and does not necessarily indicate a point of view.

Councilmember Dick explained that there are several conditions that the Hearing Examiner was required to make specific findings upon in the Gig Harbor City Code and the one finding that his motion addresses is the provision of the code which requires that for a variance to be granted. The variance from the established rules needs to be the minimum necessary to make reasonable use of the property, and in listening to the evidence presented at the hearing, there was evidence from the appellant, Dr. Hoeksema, that Dentons could improve their residence, a reasonable use of the property, but adding several bedrooms to the home for use as a Bed and Breakfast is not

the minimum necessary to make a reasonable use of the property. The Hearing Examiner asked the Dentons if they had any evidence to submit on that subject, which they did not, to show either what was necessary to make reasonable use of the property, or the minimum that the footprint that they were proposing to go into the setback could not be avoided by a change to their proposal. They didn't submit any of this in the record to show either that they couldn't make any money on the use of their premises without a fourth bedroom, and in closing a third stall for a garage. There was no evidence that houses require a three-car garage to be the minimum necessary to make that reasonable use of the residence and in fact, there simply was no evidence taken on the subject, even though the Hearing Examiner asked the question. Councilmember Dick continued to say that he believed that one can conclude that there is no substantial evidence in support of a conclusion that it was the minimum necessary, because the same number of bedrooms could have been built on the premises without encroaching, so long as they didn't have the bonus room and they didn't enclose the third stall of the garage. They could have had all the parking they wanted in the setback, they just couldn't build in the setback unless it was the minimum necessary to make reasonable use. He continued to say that maybe these aren't the rules that ought to be used, but those are the rules adopted in the code that the parties were stuck with when they came to the hearing. If there is substantial evidence to support the Hearing Examiner's conclusion that this is the minimum necessary to be a home, but there wasn't any evidence to support that conclusion. Councilmember Dick said that he does not believe that there is anything that the Council can take official or judicial notice of that every house or every lot, to make reasonable use of, requires a three-car garage. That's not something that people can agree and cannot disagree reasonably. Neither is it true. There are lots of houses that don't have three-car garages, nor even if they have three-car garages could Council agree among themselves if the Denton's house needs one to make a reasonable use. Councilmember Dick said that as a result he concluded that he can't support the decision of the Hearing Examiner on these grounds, and that was the basis of his motion.

Councilmember Ruffo explained that because he was not present at the last meeting, he reviewed the minutes as well as listen to the tape of the Hearing Examiner meeting. He said that he noticed in the minutes of the last meeting, the only concern brought about by Councilmember Dick was whether the size was in control of the applicant, and now the issue was raised of the minimum variance necessary for reasonable use, and asked why this change had occurred since the last meeting.

Councilmember Dick said that the two are somewhat related, and that there were several elements, one being the control of the applicant and the other the minimum use necessary. The two seemed related and in his analysis is based on the fact that he believes that the control of the applicant is not as clear and the real element that is missing is that it wasn't the minimum necessary because the applicant, and he didn't know what the facts are because they are not in the record, but, if it were true that reasonable use of this property required a three-car garage that extends into the setback, that evidence wasn't in the records, and Council was, unfortunately, limited to the record whether other facts exist or not. Council can't consider them if they weren't there for the Hearing Examiner to consider. He said that he couldn't find them there, and that's the basis for his concern. He said that in his thought process the two issues are somewhat related but they are in fact, two separate provisions of the City Code, and he thinks the better analysis is that it's the minimum necessary language that is the problem in this case.

Councilmember Ruffo said that when he listened to the Hearing Examiner tapes, toward the end of the tape when the Denton's were specifically asked about the garage, they responded that they felt that it was necessary to build a garage in order to carry out their duties to make the bed and breakfast the way they felt it needed to be made. He asked Councilmember Dick what kind of evidence he was suggesting.

Councilmember Dick responded by saying that wasn't what the Denton's said, but instead said that they thought that they had been making use of that area in which the third stall would be situated for parking anyway, and that it didn't make any difference because they were not trying to do anything that they hadn't been doing, which is parking in that area. They didn't discuss at all the minimum necessary nature, that you couldn't make any money or that you couldn't use the property as a residence without a third-car garage in the evidence. The Hearing Examiner asked them a direct question, and gave them the opportunity to respond, but they did not respond to that question.

Councilmember Ruffo asked why the Hearing Examiner ruled the way he did if he asked them the proper question. He said that the man is of sound legal reasoning. He said that Council deliberated a long time before they hired a Hearing Examiner and one of the criteria when he was hired was that the person would be an attorney for this very reason. And now Council is telling this person of sound legal mind, which Councilmember Dick, as the exception, presumably, the rest of us don't have that and we have to rely upon the process of legal reasoning as judged by an attorney. That is the very reason that Kenyon is there.

Councilmember Dick replied that the standard that has to apply in a quasi-judicial hearing, Council can't act like the legislators that they intend to be on most matters, they have to act like judges, and the problem is that even if you think you know the right answer, you can't do it unless the record supports it, and the same is true of the Hearing Examiner. So, Council is stuck with reading the record and finding out if there is anything in the record to support the Hearing Examiner's decision on that position. There wasn't any disputed evidence on that question, there wasn't any evidence presented in support of the idea that this is the minimum necessary to make a reasonable use of the property as a house or as a bed and breakfast. And in fact, the same number of units could have been built there if they didn't have the bonus room and the third-car garage that extends into the setback by just having their required parking in the setback for the four units. Nor was there any showing, no facts in the record, to suggest that they couldn't have gotten by with a three-bedroom bed and breakfast or a two bedroom bed and breakfast or something of the sort. Now it may be that such facts exist, and that nobody could live without a four-car, four-bedroom bed and breakfast. But unless that evidence was there to suggest that you couldn't get by with less, then there's no evidence to support it, and there are several cases...the Duple case is one that Counsel had mentioned to us, and there is another case called Cummings versus the City of Seattle, in which variances were issued. The very test we are talking about is one in which that court made findings. In that case the Hearing Examiner, just as in this case, concluded that the variance requested was the minimum necessary to make reasonable use of the property, and the court said that in that case, that there was not substantial evidence and set it aside. Because without evidence that they couldn't make money to make it a reasonable use, or they couldn't make other use sufficient to make a reasonable use, without evidence to support

that, even the well-intentioned conclusion of the Hearing Examiner could not be supported. And that was the same kind of situation, where the Hearing Examiner made a decision, as in this case, we have to take our responsibilities seriously. The only thing that we are deciding is "Was there substantial evidence in support?" If there was substantial evidence in support, we are to defer to his judgment, and I agree with that, and would. But there has to be some evidence before we defer to his judgment as being the best of two decisions.

Councilmember Young responded by saying that part of the problem is that Councilmember Dick is getting hung-up on the word "reasonable," and which is, by definition, synonymous with ordinary. If this is the case, then just the opposite has to be proven that allowing a three-car garage for a single-family residence is extraordinary. In 1940 this would have been extraordinary, but today, you can't say that it extraordinary. He said that he didn't think that the burden of proof is to show, with a survey, how many homes have three-car garages and how many have two. He continued to say that the other problem is that the Dentons did supply evidence in how far different garages encroach into the setback and were trying to show that it wasn't extraordinary and not unusual for the area. By granting the variance would in fact help put them into conformance or in line with other homes in the area. Nothing that they have asked for is extraordinary and the one thing that keeps coming up is the addition of five and six bedrooms for a bed and breakfast, which was never disputed by Dr. Hoeksema. Not once was this brought up in any testimony or any part of the appeal about the Conditional Use Permit. He said that we have to set aside that the conditional use permit was not argued, and in fact, Dr. Hoeksema brought up the fact that he thought that they were somewhat tied, but he wasn't going to argue it. His big problem was the Design Review Manual, which we all agree needs to be tossed out, and isn't germane to this issue. The reality is that Council has to decide whether or not this situation is extraordinary and I don't think that I have to force appellants to count up how many people have a similar situation or to prove to me what is ordinary, just that it's not extraordinary. If the appellant cannot prove that it is extraordinary and out of the norm, then he has no problem granting the application. He said that he did not think that it's within the realm of the Council to produce minor situations like this to overturn applications when realistically, this is not what the appeal is about. This is a legal technicality and the lay of the land prohibits them, without tearing down the building, from carrying forth with what they want to do, so it would be the same situation for a single-family residence, just adding the same garage. The topography of the site is just too difficult.

Councilmember Owel said that she believed that the term "minimum necessary" carries equal weight with the term "reasonable use" and said she would like to see it addressed. She continued to say that there is not a lot in either the Hearing Examiner's written opinion or anywhere else that addressed that particular phrase. She said that the term "minimum necessary" has bedeviled her more than any other in this particular case. She said that she is not concerned with toying with the term "reasonable use" and that it doesn't get Council away from the phrase "minimum necessary." She said that if you are going to say that a three-car garage is the minimum necessary for reasonable use of a property, disregarding this particular issue, what does that say about all issuing variance of people with two-car garages elsewhere.

Councilmember Young said that the city was welcome to do that, but there is no standard. He clarified that he had no interest in saying what is minimum or what is not minimum, and you can

have this and you can't, or your garage can be this big and you can have a RV garage with a ten-foot door. Frankly, the city should stay away from that in these variance permits. He said that the minimum necessary is that if you can build the garage in a different portion of the site and yet you ask for 20-foot encroachment instead because it would be easier, then that is not the minimum necessary. There was no evidence given that they could have sited this differently and made it easier. The minimum necessary standard is more in terms of what would make the least amount of encroachment or variation. In this case it's not that it's a three-car garage, but can you put a three-car garage differently on the site. The minimum necessary use does not apply to, isn't necessary to have a minimum of a three-car garage. I don't think that Council is here to sit through that. What that applies to is what is ordinary. In terms of what is minimum use is if you could site it a different way, if you could do without, or put it around the back or somewhere else or didn't need the variance. There was no evidence given that this was not the minimum amount necessary, no indication that this was greater than needed for that particular use.

Councilmember Owel asked if he was saying that the minimum necessary is reasonable?

Councilmember Young said that it is presumed, and why would they need to show differently. Would they need to show engineering schematics for several different possibilities?

Councilmember Owel said that her thinking was that what is the minimum necessary, and if they have a two-car garage, would they need that much encroachment?

Mayor Wilbert asked Councilmembers to keep their comments to the motion.

Councilmember Dick said that the issue of minimum necessary goes to how much encroachment. If you look at the Cummings case, there are a couple of sentences in there that are relevant, and he is reluctant to commingle this, but the point is that they conclude the issue the same. Whether or not the building the guy wanted was the minimum necessary. Two different criteria that we are talking about here were mentioned, but the one that addressed minimum necessary use, they said "We concluded that there must be a showing that a smaller building would not provide the applicant with a reasonable return, therefore, there could be a determination of whether there was a new or unnecessary hardship. Without it there is insufficient evidence in the record to show that the variance is the minimum necessary to afford relief." Size is the issue, and when someone comes in to make a variance to make reasonable use of their property, a residential use or even a bed and breakfast use, may be a reasonable use of the property. The question is how big of one? If a reasonable use of the property could be made for a two or three bed and breakfast without encroaching, then there would have to be some showing that a smaller building would not provide the applicants with a reasonable return before you could determine that this was the minimum necessary. That's the issue for us here, and whether we will require somebody that comes in and has a lot that's big enough for a four-bedroom house, but they want a nine bedroom house so that they can rent out five extra units, that even though they could put a four or a five or a seven bedroom house on their lot, they need to eat up the setbacks too in order to make reasonable use of the property? This is the only protection for the rule. The rule is there and the rule has two or three grounds upon which it may be moderated. One of the tests is the minimum necessary, and an independent test is the one which you are concerned about, and that is a separate test that even if there was some evidence that it took a four-bedroom unit to make reasonable use of the property, you still couldn't do it if you were trying to do more than the average encroachment. Those are two separate tests, you have to meet both the average

encroachment test which this one did, but it didn't show that this was the minimum necessary, and that you couldn't make a reasonable residential use or reasonable bed and breakfast use with a slightly smaller idea. Just because a bed and breakfast is a good idea doesn't mean that you can have a five-unit one when the lot's too small, only if you couldn't make any other reasonable use of it would you be entitled to it.

Councilmember Young pointed out that a seven-bedroom house would be a clearly extraordinary use and asked where you would draw the line. He said that in the reverse, you could say then that you could get away with a two-bedroom house or a 500 square foot house...you can still live there and that's a reasonable use.

Councilmember Dick said that this is what Dr. Hoeksema's decision was. Even though you may not think this was the minimum necessary, you're stuck with it unless you can show that you couldn't make a reasonable return is the language in the case here. You can't just build a bigger building than you need if a smaller building will give you a reasonable return that warrants this change.

Councilmember Young asked how you calculate that reasonable return? Councilmember Dick replied by evidence and we can't go through all of that here, but it is entirely possible that you could bring expert testimony in that would tend to show and in the marketplace it's done all the time. He said that you must have seen it in real estate and valuation. This kind of a project, you want to build a nursing home, it takes at least so many units to break even. That would be proof of the minimum necessary to make reasonable use. The same thing would be true of a bed and breakfast unless there is some showing that there is minimum necessary to make a bed and breakfast use not the maximum you want, but the minimum necessary. There isn't anything supported.

Councilmember Young asked how you would calculate that in a single-family home? There is no such thing as a return on your investment when you are building your own home. We have already agreed to separate the two issues. That was never argued, or never settled upon, not once, that this was more than the minimum and not necessary.

Councilmember Dick disagreed and said that yes, this is not the minimum necessary, because residential use of their home, which they have now, would be the minimum necessary. A bigger home, their desirable future permanent home, could even be built bigger and make their future permanent home without encroaching. That's a reasonable use of this property that doesn't require any extra encroachment.

Councilmember Young asked if this was a way of arguing the Conditional Use Permit. Councilmember Dick said that it is not, that it is talking about the minimum necessary use, and if you need to go into the setback in order to make a reasonable use.

Councilmember Ruffo said that it was his understanding that the ordinance allows, on conditional use basis, up to five guest rooms in a bed and breakfast. They chose to build four, and with that came parking requirements. He said that it seems that one could logically conclude that because there is very little parking on the street, that it is necessary to encroach upon the

setback in order to satisfy those parking requirements that the conditional use permit, which was approved, allows for. Therefore, it seems that you have to have to take into consideration that a four-guestroom bed and breakfast was approved with parking requirements along with it. Therefore, one could conclude, on a subjective basis, that there is parking required in the setback in order to satisfy the fact that there is little parking on the street. There are parking requirements that come with the four-bedroom bed and breakfast, and that in terms of the use of the term "minimum requirement" one could conclude that they need at least three parking stalls underneath. He said that this is what the Dentons may have done and that he only is surmising that. He said that we have the responsibility to surmise why they drew the plans that they drew. We do not have the benefit of the process of legal reasoning at this council level, with the possible exception of Councilmember Dick, so we have to make reasonable conclusions and what we think is fair and reasonable for the citizens of our city. I think we are looking for sharks in the bathtub.

The Mayor restated that the motion is to set aside the Hearing Examiner's decision and asked if there were any other comments from Councilmembers. There were none and she called for the question.

MOTION: Move that we set aside the final decision of the Hearing Examiner on the variance and the conditional use permit upon the grounds that there is not substantial evidence in the record to support the Hearing Examiner's finding that the proposed variance constituted the minimum necessary to make use of the property as required by the Gig Harbor City Code.
Dick/Owel - a roll-call vote was taken with these results.

Ruffo - no; Picinich - yes; Dick - yes; Owel - yes; Franich - yes; Young - no; Ekberg - no. The motion to set aside the Hearing Examiner's decision carried by a vote of four to three.

MOTION: Move that the Findings and Conclusions to support the decision of the Council be presented for adoption at the next meeting.
Dick/Picinich - four voted in favor, three voted against. The motion carried.

Councilmember Ruffo said that he had a comment, and Carol Morris, Legal Counsel, recommended that if it were a comment regarding the decision, that he wait until the appeal period expires. He assured her that it was not specific to this case and said that he would wait until Council Comments.

The Mayor announced a short recess at 7:47 p.m. The meeting reconvened at 7:58 p.m.

2. Second Reading of Ordinance - Annexing Property Adjacent to Public Works Shop. John Vodopich presented this ordinance explaining that the city is the owner of approximately 5.3 acres adjacent to the existing Public Works shop located at 5118 89th Street.

MOTION: Move to adopt Ordinance No. 897 annexing approximately 5.3 acres that is immediately adjacent to and south of the existing City of Gig Harbor Public Works Shop located at 5118 89th Street.
Dick/Picinich - unanimously approved.

3. Second Reading of Ordinance - Official Zoning Map Change - Peninsula School District Rezone, Prentice Avenue. John Vodopich presented this ordinance rezoning the Harbor Ridge Middle School site from Single-Family resident to Public Institutional.

MOTION: Move to adopt Ordinance no. 898 to rezone the property located at 9010 Prentice Avenue from Single-Family resident to Public Institutional.
Picinich/Ruffo - unanimously approved.

4. Second Reading of Ordinance - School Impact Fees. Mark Hoppen, City Administrator, explained recommended that this ordinance be tabled until the 18th to allow action from the School District.

MOTION: Move to table this until the meeting of the 28th.
Ruffo/Picinich - unanimously approved.

5. Authorization for the Use of Uniforms and Hold Harmless / Indemnity Agreement. Chief Mitch Barker presented this agreement that had come before Council late last year and which Carol Morris had been asked to review. He explained that the agreement is in place to make sure the city does not have problems with FLSA overtime claims on officers working in an uniform capacity within the workweek while also on duty. He explained that the agreement had been in place since 1999 and was being brought back to change the names of the officers to reflect those that had left the department and to add the new names. He asked that Council authorize the Mayor to sign the agreement. Carol Morris answered questions regarding indemnification and Workmen's Comp.

MOTION: Move to authorize the Mayor to sign the attached agreement for Hold Harmless and Indemnity.
Ruffo/Picinich - unanimously approved.

NEW BUSINESS:

1. Notice of Intention to Annex - Northwest Gig Harbor Employment Center. John Vodopich said that in December the city had received the Notice of Intention to Commence Annexation for approximately 200 acres located west of Highway 16 and north of Gig Harbor High School, all within the city's Urban Growth Area. He explained that the City must set a meeting date within 60 days of receipt of the petition to determine whether to accept the proposed annexation area. Councilmember Young asked about the advantage to including the portion of the east side of Highway 16 in the annexation. John explained that the applicant had made inquiries of the property owners in that area, who showed no interest at this time. He said that one of the issues addressed by the Boundary Review Board is irregular boundaries.

MOTION: Move to set the meeting for the proposed annexation on January 28th to adopt, modify or reject the petition.
Dick/Ruffo - unanimously approved.

2. First Reading of Ordinance - Water Rate Increase. David Rodenbach, Finance Director, presented this ordinance approving a water rate increase of 5% in order to reflect the increased costs of maintenance and operations. He added that the water rates had last been increased in 1994. He said that the city was performing a rate study during 2002 in order to establish to optimize the rate structure. Dave explained that the rate increase will go into effect March 1st, not February 1st due to the effective date of the ordinance, and the language would be amended to reflect this change for the second reading.

3. First Reading of Ordinance - Sewer Rate Increase. Dave Rodenbach presented this ordinance, explaining that the effective date would also be changed to March 1st. He said that sewer service rates last increased in 1999. This will return at the next meeting for a second reading.

4. Equipping Well No. 6 - Contract Award. John Vodopich explained that a budget objective for the water department was to complete the supply and distribution systems associated with Well No. 6. He said that eight bids were received, with Pape & Sons Inc. the lowest responsible bidder.

MOTION: Move to authorize the execution of the contract for the Equipping Well No. 6 Project to Pape and Sons Construction, Inc., in the amount of two hundred twenty-eight thousand two hundred sixty-three dollars and ninety-six cents (\$228,263.96.)
Picinich/Ruffo - unanimously approved.

STAFF REPORTS:

1. GHPD - November and December Stats. Chief Barker presented the information from November and December and explained that a mistake had been found in the formula, explaining the increased numbers in criminal traffic tickets. He said that the actual figures are down 1%.

2. John Vodopich, Director of Community Development - Update on Gig Harbor Sportsman Club. John said that he had contacted two acoustical firms to obtain proposals to evaluate the noise issues related to shooting activities, and had received one proposal from BRC Acoustics for \$4,100 plus expenses. The other firm, Michael R. Yantis Associates did not respond. John asked for direction on an appropriate amount that would be acceptable to expend on a noise evaluation. He explained that the noise evaluation was being conducted at the recommendation of the City Attorney prior to adoption of an ordinance that might regulate the levels. He continued to say that he had contacted the NRA to address the issue of having a Range Technical Advisor on-site and had received a letter of concurrence from the Sportsman Club and a contract from NRA for these services. He said that he would review the contract with the City Attorney and bring it back at a later date. He concluded by saying that he had received two letters from residents in the Canterwood Development regarding the club that were enclosed with the packet.

MOTION: Move to authorize staff to negotiate a contract for an acoustical study in an amount not to exceed \$5,000.
Young/Ekberg - unanimously approved.

Chief Barker passed out a report on the investigation of the round that was fired into Avalon Woods.

ANNOUNCEMENT OF OTHER MEETINGS:

PNA Public Forum on Building Size Limitations - Tuesday, January 15th, 7:00 p.m. City Hall. Staff was asked to publicly notice the meeting to allow Councilmembers to attend.

COUNCIL COMMENTS / MAYOR'S REPORT:

Councilmember Ruffo said that he would like Carol Morris to review Chapter 17 of the Municipal Code and present modifications so that an appeal of a Hearing Examiner decision would go before another competent legal entity, not the City Council. He made a motion to this effect. Carol Morris clarified that an appeal would then go to Superior Court.

MOTION: Move to direct Legal Counsel to draft an ordinance amending Chapter 17 of the Gig Harbor Municipal Code to reflect that an appeal of a Hearing Examiner's decision would go before Superior Court.
Ruffo/Young - roll call vote results follow.

Councilmember Ruffo - yes; Picinich - yes; Dick - no; Owel - yes; Franich - no; Young - yes; Ekberg - yes. The motion carried five to two.

Councilmember Ruffo then recommended that a public hearing be held on this issue to see what the citizens would like to see happen.

PUBLIC COMMENT:

Dan Cook - Mr. Cook said that the Sportsman's Club had used Michael Yantis for a previous acoustic study and highly recommended the firm.

MAYOR'S REPORT:

Mayor Wilbert reported that she had attended the hearing pertaining the Tacoma Narrows Airport, adding that Councilwoman Karen Biskey was continuing her efforts to address the needs that were presented at the meeting. Councilmember Picinich said that he also had attended the meeting and gave an overview of some of the issues that came up.

EXECUTIVE SESSION: For the purpose of discussing property acquisition per RCW 42.31.110(b) and potential litigation per RCW 42.31.110(i).

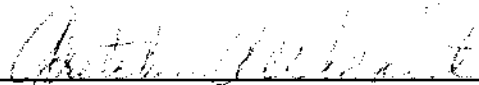
MOTION: Move to adjourn to Executive Session at 8:40 p.m. for approximately twenty minutes to discuss property acquisition and potential litigation.
Picinich/Young - unanimously approved.

MOTION: Move to return to regular session at 9:00 p.m.
Picinich/Ruffo - unanimously approved.

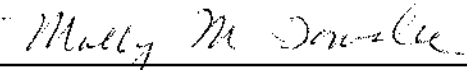
ADJOURN:

MOTION: Move to adjourn at 9:00 p.m.
Ruffo/Picinich - unanimously approved.

Cassette recorder utilized.
Tape 641 - Side A 013 - end.
Tape 641 - Side B 000 - end.
Tape 642 - Side A 000 - 376.



Gretchen A. Wilbert, Mayor



City Clerk